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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,847	03/12/2001	Gerd Mansfeld	Mo-6209/HR-183	1134

157 7590 09/25/2003

BAYER POLYMERS LLC
100 BAYER ROAD
PITTSBURGH, PA 15205

EXAMINER

JOHNSON, EDWARD M

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 09/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/762,847

Applicant(s)

MANSFELD ET AL.

Examiner

Edward M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 9-11 and 13-24 is/are rejected.
- 7) ☒ Claim(s) 4 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

~~Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).~~

- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 5-7, 9, and 13-24 rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida et al. US 4,487,613.

Regarding claims 1 and 18-19, Yoshida '613 discloses a method for odorization of hydrocarbon gases comprising combination of 2-methoxy-3-isobutyl pyrazine and methyl acrylate (see columns 5 and 6, Formulas) as a warning agent for hydrocarbon fuels (see abstract).

Regarding claims 9, 21-22, and 24 Yoshida '613 discloses a composition for odorization of hydrocarbon gases comprising combination of 2-methoxy-3-isobutyl pyrazine and methyl acrylate (see columns 5 and 6, Formulas).

Regarding claims 5 and 13, Yoshida discloses addition of 2-methyl-3-isobutyl pyrazine (see column 6, lines 56-61).

Regarding claims 6-7 and 14-15, 0.5 parts pyrazine to 100 parts methyl acrylate (see columns 5-6, Formulas).

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Regarding claims 16-17, Yoshida '613 discloses low corrosivity (see column, line 17).

Regarding claims 20 and 23, Yoshida '613 discloses the compounds as a warning agent for hydrocarbon fuels (see abstract).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-3 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida '613.

Regarding claims 2-3 and 10-11, Yoshida fails to specifically disclose 2 different acrylic esters.

It is considered that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use ethyl acrylate in combination with the methyl acrylate of Yoshida because Yoshida discloses combinations of ethyl acrylate useful for odorization (see column 1, lines 14-16 and 64-68; column 2, lines 1-6).

Allowable Subject Matter

5. Claims 4 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: It would not have been obvious to one of ordinary skill in the art at the time the invention was made to use the weight ratio of 9:1 to 1:9 of the two acrylic esters in an amount effective to warn of presence in the method of imparting odor to an odorless combustible gas of the instant claims 4 and 12.

Response to Arguments

7. Applicant's arguments filed 8/6/03 have been fully considered but they are not persuasive.

Some of the previous rejections and grounds thereof have been dropped and others added, all in view of Applicant's amendment.

It is argued that regarding the Examiner's point 8... quantitative limitation. This is not persuasive because Yoshida discloses a warning agent for hydrocarbon fuels (see abstract).

It is argued that Yoshida discloses the use of... a gas-odorizing agent. This is not persuasive for the reasons above.

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Applicant's claim reads on the disclosure of the prior art because all elements of the claim are disclosed (pyrazine and a fuel warning agent).

It is argued that a mixture consisting of... (according to the present invention). This is not persuasive for the reasons above. Every element of Applicant's claim is disclosed in the prior art.

It is argued that additionally, Applicants note that... disclosed by Yoshida. This is not persuasive because Applicant's claim is not limited to "2-methoxy-3-isobutyl" as a "main source of odor". It is noted that the features upon which applicant relies (i.e., "2-methoxy-3-isobutyl" as a "main source of odor") are not recited in the rejected claim(s). Although the claims

are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The rejection over Mookherjee has been withdrawn in view of Applicant's amendment.

It is argued that claims 2-3 and 10-11 are allowable because of claims 1 and 9. This is not persuasive because claims 1 and 9 are rejected for reasons already of record.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward M. Johnson whose telephone number is 703-305-0216. The examiner can normally be reached on M-F 6:30-4:00.

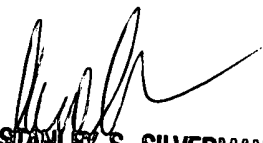
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley S. Silverman can be reached on 703-308-3837. The fax phone numbers for the

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organization where this application or proceeding is assigned
are 703-872-9310 for regular communications and 703-872-9311 for
After Final communications.

Any inquiry of a general nature or relating to the status
of this application or proceeding should be directed to the
receptionist whose telephone number is 703-308-0661.

EMJ
September 22, 2003



STANLEY S. SILVERMAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700
